

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

IN THE MATTER OF THE SEARCH OF
INFORMATION ASSOCIATED WITH
FACEBOOK USER ID 100030630932101,
USER ID 100007455615944 AND USER ID
100014794184940 THAT IS STORED AT
PREMISES CONTROLLED BY FACEBOOK
INC.

Case No. 1:18-mj-00394-JCN

Filed Under Seal

**AFFIDAVIT IN SUPPORT OF
AN APPLICATION FOR A SEARCH WARRANT**

I, Tyler Martin, being first duly sworn, hereby depose and state as follows:

INTRODUCTION AND AGENT BACKGROUND

1. I make this affidavit in support of an application for a search warrant for information associated with three different Facebook user IDs that is stored at premises owned, maintained, controlled, or operated by Facebook Inc. ("Facebook"), a social networking company headquartered in Menlo Park, California. The information to be searched is described in the following paragraphs and in Attachment A. This affidavit is made in support of an application for a search warrant under 18 U.S.C. §§ 2703(a), 2703(b)(1)(A) and 2703(c)(1)(A) to require Facebook to disclose to the government records and other information in its possession, pertaining to the subscriber or customer associated with each of the three user IDs.

2. I am a Special Agent with the United States Secret Service and have been since December 2016. My experience as a Special Agent has included, among other things, the investigation of cases involving violent crimes and threats against the President of the United States, other protected persons, and the transmission of threats in interstate and foreign commerce. I have received training and have gained experience in interviewing and

interrogation techniques, arrest procedures, search warrant applications, the execution of searches and seizures, and various other criminal laws and procedures. I also have received training in the execution of search warrants involving the tracking of telephones. I have not included every detail of every aspect of my training, education, and experience but have highlighted those areas most relevant to this application.

2. The facts in this affidavit come from my personal observations, my training and experience, and information obtained from other agents and witnesses. This affidavit is intended to provide the facts necessary for a determination of probable cause for the requested warrant and does not set forth all of my knowledge about this matter.

3. Based on my training and experience and the facts as set forth in this affidavit, there is probable cause to believe that violations of Title 18, United States Code, Section 875(c) have been committed by Jesus Wellington Kong. There is also probable cause to search the information described in Attachment A for evidence of these crimes, as described in Attachment B.

PROBABLE CAUSE

4. On November 24, 2018, the Augusta Police Department received a report that a person using the Facebook user name “Osama Kingdada” was posting threats to the Facebook page of Employment Specialists of Maine (“ESM”). ESM is an organization based in Maine that provides services to individuals with disabilities. ESM has locations in Augusta, Skowhegan, and Auburn and has a public Facebook page.

5. I have reviewed the postings made by “Osama Kingdada” to the Maine organization’s Facebook page. The Facebook user ID for the “Osama Kingdada” account is 100030630932101. On November 24, 2018, at approximately 11:56 a.m., “Osama Kingdada”

wrote: "i really want to commit a mass shooting at your central office i will not lie". I have also reviewed the postings made by user "Osama Kingdada" on that user's own Facebook page around the time the November 24 threat was made by "Osama Kingdada". On postings made on November 24, 2018, "Osama Kingdada" posted the names and photographs of four employees of ESM and posted a photograph of one of those employees that appears to have been taken from that employee's Facebook page. The postings on the "Osama Kingdada" Facebook page of the ESM employee names and the photographs were made without any comment or threats. "Osama Kingdada" did, however, post the following comment on November 24, 2018, at 12:05 p.m.: "its better to attack the central office its less secure then the northern office . . . sincerely from your favorite war strategist . . ."

6. I have learned that Jesus Wellington Kong was a client of the Maine organization for most of 2017 and 2018 and that the employees named on the "Osama Kingdada" Facebook page are employees who would have worked with Mr. Kong during that time. Mr. Kong is no longer a client of ESM.

7. On November 29, 2018, I spoke with the president of ESM. She had spoken with an employee of ESM who had provided casework services to Mr. Kong. According to that caseworker, Mr. Kong had reached out to the caseworker recently and had sent the caseworker a text on November 2, 2018. The caseworker had made a report to the Federal Bureau of Investigation ("FBI") on November 2, 2018, that Mr. Kong had been sending the caseworker text messages saying that he has killed people and has thoughts of killing people.

8. An FBI analyst undertook an effort to attempt to confirm what evidence and information supported a suspected connection between Facebook user "Osama Kingdada" and Jesus Wellington Kong. The analyst was able to find and access a Facebook page associated

with “Kong Wellington Jesus”. The Facebook user ID for the “Kong Wellington Jesus” account is 100007455615944. That page has posts showing images of a person purporting to be the “Kong Wellington Jesus” Facebook page user; that person is known by law enforcement agents to be Jesus Wellington Kong. The “Kong Wellington Jesus” Facebook page also contained several postings mentioning “207 Nikki” and a video in which Mr. Kong talks about “207 Nikki”. In that video, he refers “207 Nikki” and mentions the name of a person that is very similar to the name of an employee of ESM (the first name is the same name and the last name is almost the same name as the employee’s last name). The reference to “207 Nikki” is significant because the “Osama Kingdada” Facebook account posted a photograph of an employee of the Maine organization on November 24, 2018, that also mentions “207 Nikki”.

9. Based on my training and experience, I also have reason to believe that Mr. Kong has been making his Facebook postings using a mobile device, most likely a phone. I base this, in part, on the following Facebook posts made on the Facebook page for “Kong Wellington Jesus”:

- a. On November 19, 2018, at approximately 4:16 p.m., a person known to be Jesus W. Kong posted a video that was approximately twenty minutes long. In that video, he states, among other things, that he intends to harm President Donald Trump. Throughout the course of the video, Kong is walking around in an undisclosed location speaking into what appears to be his cell phone. Kong is outside during the course of the video and you can hear traffic and see the different buildings in the background.
- b. On November 20, 2018, at approximately 1:28 p.m., a person known to be Jesus W. Kong posted a video titled “Sorry Nikki Skit” where he is walking around speaking into his cell phone. The video is approximately 13:23 seconds. Kong mentions killing Donald Trump with a chain saw and calls him a “sick motherfucker.” Kong is outside during the course of the video and you can hear traffic and see the different buildings in the background.

10. On December 3, 2018, at 6:08 a.m., Facebook user “Osama Kingdada” posted the following message to the Skowhegan Area High School public Facebook page: “Just a fact,,, I wouldn’t post the military I am joining on facebook,,,because,,,,I am the man that keeps threatening to shoot up Skowhegan area high school and leave a few students in a bloody pool,,,now and days shooting up a school is really cool,,,if you ain’t shooting up a school you just ain’t cool,,, yup and part of the rules is temporarily shutting down a school,,, because this man named jesus wellington kong is considering hiring [name redacted] granddaughter to shoot up Skowhegan area high school it would be interesting,,,” On the same date, at 6:14 a.m., Facebook user “Osama Kingdada” posted the following message to the same public Facebook page: “New video coming soon,,,,, from the man that not only threatened to hire [name redacted] granddaughter to commit a mass shooting at Skowhegan are high school,,, the man also has a promising military career,,,,watchout ,,, new video coming soon,,,”. Facebook user “Osama Kingdada” gave a name in the messages above; I have redacted that name as indicated.

11. On December 4, 2018, I spoke with Detective Todd Nyberg of the Augusta Police Department about his investigation and the posts made to the Skowhegan Area High School Facebook page by “Osama Kingdada”. Detective Nyberg told me that he had viewed the posts to the school’s Facebook page as well as a video that had been posted by Facebook user “Osama Kingdada” on the Facebook page belonging to “Osama Kingdada”. According to Detective Nyberg, that video showed Jesus W. Kong speaking and in the video Mr. Kong says that he [Mr. Kong] is the guy who threatened to shoot up the Skowhegan Area High School. The “Osama Kingdada” Facebook account was taken down by Facebook on about December 4, 2018.

12. Through an examination of images in Facebook posts made to a third Facebook account (“Jesus Wellington Kong”), an FBI analyst was able to determine that a video posting

made on that account on December 4, 2018, showed a location in the area of Olympia, Washington. The Facebook user ID for that account is 100014794184940. This same account had a post about “207 Nikki” on November 9, 2018 and a post about “207 Nikki” December 4, 2018. The video posted on the account on December 4, 2018, shows Jesus Wellington Kong walking along various streets and past numerous buildings. On December 4, 2018, Jesus W. Kong was located in Olympia by local law enforcement officers.

13. After Jesus W. Kong was located in Washington, he was provided with Miranda warnings. He waived Miranda rights and agreed to speak with law enforcement officers. The following is a summary of that interview as it relates to the threats to the Skowhegan Area High School and ESM: Mr. Kong said that he had threatened the high school. He then said that he had not threatened the school himself and that the granddaughter of a person he named would commit the shooting. He also said that he had made a threat via his Facebook page to commit a mass shooting at ESM. He said that he had posted pictures of ESM employees so that those employees would see the posts and be scared by them. He said that he had posted the threats because he wanted to be a terrorist and join a foreign militia. He said that he had made the threatening Facebook posts using his cellular telephone. Agents with the USSS seized the cellular telephone that Mr. Kong was carrying with him.

14. Facebook owns and operates a free-access social networking website of the same name that can be accessed at <http://www.facebook.com>. Facebook allows its users to establish accounts with Facebook, and users can then use their accounts to share written news, photographs, videos, and other information with other Facebook users, and sometimes with the general public.

15. Facebook asks users to provide basic contact and personal identifying information to Facebook, either during the registration process or thereafter. This information may include the user's full name, birth date, gender, contact e-mail addresses, Facebook passwords, physical address (including city, state, and zip code), telephone numbers, screen names, websites, and other personal identifiers. Facebook also assigns a user identification number to each account.

16. Facebook users may join one or more groups or networks to connect and interact with other users who are members of the same group or network. Facebook assigns a group identification number to each group. A Facebook user can also connect directly with individual Facebook users by sending each user a "Friend Request." If the recipient of a "Friend Request" accepts the request, then the two users will become "Friends" for purposes of Facebook and can exchange communications or view information about each other. Each Facebook user's account includes a list of that user's "Friends" and a "News Feed," which highlights information about the user's "Friends," such as profile changes, upcoming events, and birthdays.

17. Facebook users can select different levels of privacy for the communications and information associated with their Facebook accounts. By adjusting these privacy settings, a Facebook user can make information available only to himself or herself, to particular Facebook users, or to anyone with access to the Internet, including people who are not Facebook users. A Facebook user can also create "lists" of Facebook friends to facilitate the application of these privacy settings. Facebook accounts also include other account settings that users can adjust to control, for example, the types of notifications they receive from Facebook.

18. Facebook users can create profiles that include photographs, lists of personal interests, and other information. Facebook users can also post "status" updates about their whereabouts and actions, as well as links to videos, photographs, articles, and other items

available elsewhere on the Internet. Facebook users can also post information about upcoming “events,” such as social occasions, by listing the event’s time, location, host, and guest list. In addition, Facebook users can “check in” to particular locations or add their geographic locations to their Facebook posts, thereby revealing their geographic locations at particular dates and times. A particular user’s profile page also includes a “Wall,” which is a space where the user and his or her “Friends” can post messages, attachments, and links that will typically be visible to anyone who can view the user’s profile.

19. Facebook allows users to upload photos and videos, which may include any metadata such as the location that the user transmitted when s/he uploaded the photo or video. It also provides users the ability to “tag” (i.e., label) other Facebook users in a photo or video. When a user is tagged in a photo or video, he or she receives a notification of the tag and a link to see the photo or video. For Facebook’s purposes, the photos and videos associated with a user’s account will include all photos and videos uploaded by that user that have not been deleted, as well as all photos and videos uploaded by any user that have that user tagged in them.

20. Facebook users can exchange private messages on Facebook with other users. Those messages are stored by Facebook unless deleted by the user. Facebook users can also post comments on the Facebook profiles of other users or on their own profiles; such comments are typically associated with a specific posting or item on the profile. In addition, Facebook has a chat feature that allows users to send and receive instant messages through Facebook Messenger. These chat communications are stored in the chat history for the account. Facebook also has Video and Voice Calling features, and although Facebook does not record the calls themselves, it does keep records of the date of each call.

21. If a Facebook user does not want to interact with another user on Facebook, the first user can “block” the second user from seeing his or her account.

22. Facebook has a “like” feature that allows users to give positive feedback or connect to particular pages. Facebook users can “like” Facebook posts or updates, as well as webpages or content on third-party (*i.e.*, non-Facebook) websites. Facebook users can also become “fans” of particular Facebook pages.

23. Facebook has a search function that enables its users to search Facebook for keywords, usernames, or pages, among other things.

24. Each Facebook account has an activity log, which is a list of the user’s posts and other Facebook activities from the inception of the account to the present. The activity log includes stories and photos that the user has been tagged in, as well as connections made through the account, such as “liking” a Facebook page or adding someone as a friend. The activity log is visible to the user but cannot be viewed by people who visit the user’s Facebook page.

25. Facebook also has a Marketplace feature, which allows users to post free classified ads. Users can post items for sale, housing, jobs, and other items on the Marketplace.

26. In addition to the applications described above, Facebook also provides its users with access to thousands of other applications (“apps”) on the Facebook platform. When a Facebook user accesses or uses one of these applications, an update about that the user’s access or use of that application may appear on the user’s profile page.

27. Facebook also retains Internet Protocol (“IP”) logs for a given user ID or IP address. These logs may contain information about the actions taken by the user ID or IP address on Facebook, including information about the type of action, the date and time of the action, and the user ID and IP address associated with the action. For example, if a user views a

Facebook profile, that user's IP log would reflect the fact that the user viewed the profile, and would show when and from what IP address the user did so.

28. Social networking providers like Facebook typically retain additional information about their users' accounts, such as information about the length of service (including start date), the types of service utilized, and the means and source of any payments associated with the service (including any credit card or bank account number). In some cases, Facebook users may communicate directly with Facebook about issues relating to their accounts, such as technical problems, billing inquiries, or complaints from other users. Social networking providers like Facebook typically retain records about such communications, including records of contacts between the user and the provider's support services, as well as records of any actions taken by the provider or user as a result of the communications.

29. As explained herein, information stored in connection with a Facebook account may provide crucial evidence of the "who, what, why, when, where, and how" of the criminal conduct under investigation, thus enabling the United States to establish and prove each element or alternatively, to exclude the innocent from further suspicion. In my training and experience, a Facebook user's IP log, stored electronic communications, and other data retained by Facebook, can indicate who has used or controlled the Facebook account. This "user attribution" evidence is analogous to the search for "indicia of occupancy" while executing a search warrant at a residence. For example, profile contact information, private messaging logs, status updates, and tagged photos (and the data associated with the foregoing, such as date and time) may be evidence of who used or controlled the Facebook account at a relevant time. Further, Facebook account activity can show how and when the account was accessed or used. For example, as described herein, Facebook logs the Internet Protocol (IP) addresses from which users access

their accounts along with the time and date. By determining the physical location associated with the logged IP addresses, investigators can understand the chronological and geographic context of the account access and use relating to the crime under investigation. Such information allows investigators to understand the geographic and chronological context of Facebook access, use, and events relating to the crime under investigation. Additionally, Facebook builds geo-location into some of its services. Geo-location allows, for example, users to “tag” their location in posts and Facebook “friends” to locate each other. This geographic and timeline information may tend to either inculpate or exculpate the Facebook account owner. Last, Facebook account activity may provide relevant insight into the Facebook account owner’s state of mind as it relates to the offense under investigation. For example, information on the Facebook account may indicate the owner’s motive and intent to commit a crime (e.g., information indicating a plan to commit a crime), or consciousness of guilt (e.g., deleting account information in an effort to conceal evidence from law enforcement).

30. Therefore, the computers of Facebook are likely to contain all the material described above, including stored electronic communications and information concerning subscribers and their use of Facebook, such as account access information, transaction information, and other account information.

31. On November 30, 2018, law enforcement provided Facebook a preservation request for two Facebook accounts associated with this investigation—one with user ID 100007455615944 and the other with user ID 100014794184940. On December 4, 2018, law enforcement provided Facebook a preservation request for the Facebook account with user ID 100014794184940. Facebook acknowledged receipt of all of these requests.

INFORMATION TO BE SEARCHED AND THINGS TO BE SEIZED

32. I anticipate executing this warrant under the Electronic Communications Privacy Act, in particular 18 U.S.C. §§ 2703(a), 2703(b)(1)(A) and 2703(c)(1)(A), by using the warrant to require Facebook to disclose to the government copies of the records and other information (including the content of communications) particularly described in Section I of Attachment B. Upon receipt of the information described in Section I of Attachment B, government-authorized persons will review that information to locate the items described in Section II of Attachment B.

CONCLUSION

33. Based on the forgoing, I request that the Court issue the proposed search warrant.

34. This Court has jurisdiction to issue the requested warrant because it is “a court of competent jurisdiction” as defined by 18 U.S.C. § 2711. 18 U.S.C. §§ 2703(a), (b)(1)(A) & (c)(1)(A). Specifically, the Court is “a district court of the United States . . . that – has jurisdiction over the offense being investigated.” 18 U.S.C. § 2711(3)(A)(i).

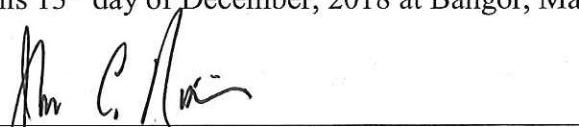
Pursuant to 18 U.S.C. § 2703(g), the presence of a law enforcement officer is not required for the service or execution of this warrant.

Respectfully submitted,



Tyler Martin
Special Agent
United States Secret Service

Subscribed and sworn to before me,
On this 13th day of December, 2018 at Bangor, Maine



HON. JOHN C. NIVISON
UNITED STATES MAGISTRATE JUDGE